Court No. 2

In the High Court of Uttaranchal at Nainital.

Appeal Against Order No. 84 of 2002.

1. Mohd. Akil S/o Bundu Khan,
   District Hardwar,
2. Smt.Samira Begum w/o Moh.Akil,
   R/o 61, Mohalla Sati, Roorkee,
   District-Hardwar.

.....Claimant/Appellants

Versus

(1)Shamshad S/o Aardli Khan,
R/o Baluua, P.S. Shyamdeura,
District-Maharaj Ganj,
Presently residing in Workshop
Irrigation Department, Quarter
No. D/46, New Colony, Bahadarabad,
P.S.Jwalapur, District-Hardwar,
-Driver Truck No.UP 10-2465.

(2)Executive Engineer R/o Upper Ganga Nagar
Irrigation Department, Division World Bank,
Roorkee, District-Hardwar,
Owner/Officer Truck No.UP 10-2465,

(3)State of Uttaranchal through Collector Hardwar.

..... Opp.party/Respondents.

Sri Nagesh Agarwal, learned counsel for the appellants.
Smt.Beena Pande, learned Standing counsel for the State of U.P.

Dated: 21th Aug.,2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been filed by the claimant/appellants under Sec. 173 of the Motor Vehicles Act, 1988 for enhancement against the judgment and order dated 19.01.2001 passed by the Motor Accident Claims Tribunal/Additional District Judge, Hardwar in Motor Accident Claim Case No. 46 of 1998.

2. Brief facts giving rise to this appeal are that on 02.03.1998 Saleem son of claimant No.1 was going from

his house to the workshop of B.H.E.L. by his two wheeler-Moped. At about 12.30 p.m., when he reached on the wooden bridge at Bahadarabad-Kaliar marg, Truck No. UP 10-2465 going from the side Bahadarabad to Roorkee hit the cycle of Saleem due to which Saleem died on the spot. It was alleged that at the time of accident the said truck was being by its driver rashly and negligently. The deceased was aged 22 years at the time of accident and he was earning Rs.3,000/- per month by doing the work of repairing and selling spare parts. The claimants who are father and mother of the deceased filed on claim petition for compensation worth Rs 10,42,000/- against the opposite parties.

3. The opposite parties contested the case before the learned Tribunal. The Tribunal after framing the necessary issues decided the same in favour of the claimants and decreed the claim petition for a sum of Rs.1,57,500/- in total for different counts alongwith interest at the rate of 9% per annum from the date of claim petition till the date of payment.

4. The appeal for enhancement of the amount of compensation has been challenged only on the ground that the learned Tribunal has erred in deducting 40%, which he had to spend on him, out of the total amount of compensation. We find some force in the contention of the learned counsel for the appellants. We have gone through the material on record. In the facts and circumstances of this case 40% deduction appears excessive. Considering the age of the deceased and dependency, we are of the opinion, to meet the ends of justice, one-third deduction out of the total amount of compensation i.e. Rs. 2,55,000/- which the learned Tribunal calculated applying the multiplier of ‘17’ is just and proper in this case. After

deducting 1/3 i.e. Rs.85,000/- the amount of compensation comes to Rs.2,55,000-85,000=Rs.1,70,000/- The learned Tribunal has fixed Rs. 2000/- in the court of funeral expenses and Rs. 2500/- in the count of loss of state which is just and proper. Thus, the total compensation which the claimants are entitled to get comes to Rs.174,500/-.

5. The appeal is allowed partly. The impugned order dated 19.01.2002 is set aside. The claimants/appellants shall be paid Rs. 1,74,500/- as compensation accordingly by the respondents for all counts alongwith interest at the rate of 9% (nine per cent) per annum from the date of claim petition till the date of payment.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh